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UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA, SAN JOSE DIVISION

CHASOM BROWN, WILLIAM BYATT,  
JEREMY DAVIS, CHRISTOPHER  
CASTILLO, and MONIQUE TRUJILLO,  
individually and on behalf of all similarly  
situated,

Plaintiffs,

v.

GOOGLE LLC,  
Defendant.

Case No. 5:20-cv-03664-LHK-SVK

**JOINT SUBMISSION IN RESPONSE TO  
DKTS. 238, 247 RE: SEALING PORTIONS  
OF AUGUST 12, 2021 HEARING  
TRANSCRIPT**

Referral: Hon. Susan van Keulen, USMJ

1 August 25, 2021

2 Submitted via ECF

3 Magistrate Judge Susan van Keulen  
4 San Jose Courthouse  
5 Courtroom 6 - 4th Floor  
6 280 South 1st Street  
7 San Jose, CA 95113

8 Re: Joint Submission in Response to Dkts. 238, 247 re: Sealing Portions of August 12,  
9 2021 Hearing Transcript  
10 *Brown v. Google LLC*, Case No. 5:20-cv-03664-LHK-SVK (N.D. Cal.)

11 Dear Magistrate Judge van Keulen:

12 Pursuant to Your Honor's August 11, 2021 Order on Google's Administrative Motion to Seal  
13 Courtroom for August 12, 2021 Discovery Hearing (Dkt. 238), and August 13, 2021 Stipulation and  
14 Order Authorizing Release of August 12 Hearing Transcript (Dkt. 247), Plaintiffs and Google LLC  
15 ("Google") jointly submit this statement regarding sealing portions of the August 12, 2021 hearing  
16 transcript.  
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Google respectfully seeks to seal the following portions of the August 12, 2021 Hearing Transcript (“Transcript”), which contain Google’s confidential and proprietary information regarding highly sensitive features of Google’s internal systems and operations that Google does not share publicly, including: the various types of Google’s internal data structures, identifiers and their proprietary functions, as well as plaintiff health information. This Court has previously sealed the same or substantively similar information, including in Dkt. Nos. 143, 152, 160, 172, 174, 183, 190, 197, 226, 238, 240. This information is highly confidential and should be protected.

This Administrative Motion pertains to the following information contained in the Transcript:

Document	Portions to be Filed Under Seal	Party Claiming Confidentiality
August 12, 2021 Hearing Transcript	Portions Highlighted in Yellow at 12:22-24; 14:3; 53:23	Google

The parties conferred on the proposed redactions to the Transcript. Plaintiffs **support** and **jointly move for** sealing of the two-word redactions at Tr. 53:23. Plaintiffs take **no position** but do **not oppose** sealing the proposed redactions at Tr. 12:23-24 Tr. (starting with “we”) and 14:3. Plaintiffs **disagree** with the redactions at Tr. 12:22-23 (from “how” through “content”). Plaintiffs will not oppose the motion.

## **I. LEGAL STANDARD**

The common law right of public access to judicial records in a civil case is not a constitutional right and it is “not absolute.” *Nixon v. Warner Communications, Inc.*, 435 U.S. 589, 598 (1978) (noting that the “right to inspect and copy judicial records is not absolute” and that “courts have refused to permit their files to serve as reservoirs of . . . sources of business information that might harm a litigant’s competitive standing”). The right to access is further diminished where, as here, a party seeks to prevent the disclosure of information discussed during a hearing on a non-dispositive discovery motion; rather than the more stringent “compelling reasons” standard, a party seeking to seal materials in these circumstances must make only a “particularized showing” of “good cause.” *Kamakana v. City & County of Honolulu*, 447 F.3d 1172, 1178–80 (9th Cir. 2006). A “strong presumption of access” does **not** apply to sealed discovery documents attached to non-dispositive

1 motions; a “party seeking disclosure must present sufficiently compelling reasons why the sealed  
 2 discovery document should be released.” *Phillips ex rel. Estates of Byrd v. General Motors Corp.*, 307  
 3 F.3d 1206, 1213 (9th Cir. 2002). Sealing is appropriate when the information at issue constitutes  
 4 “competitively sensitive information,” such as “confidential research, development, or commercial  
 5 information.” *France Telecom S.A. v. Marvell Semiconductor Inc.*, 2014 WL 4965995, at \*4 (N.D.  
 6 Cal. Oct. 3, 2014); *see also Phillips v. Gen. Motors Corp.*, 307 F.3d 1206, 1211 (9th Cir. 2002)  
 7 (acknowledging courts’ “broad latitude” to “prevent disclosure of materials for many types of  
 8 information, including, but not limited to, trade secrets or other confidential research, development, or  
 9 commercial information”).

## 10 **II. THE ABOVE IDENTIFIED MATERIALS EASILY MEET THE “GOOD CAUSE”** 11 **STANDARD AND SHOULD ALL BE SEALED**

12 Although the materials that Google seeks to seal here easily meet the higher “compelling  
 13 reasons” standard, the Court need only consider whether these materials meet the lower “good cause”  
 14 standard. Courts have repeatedly found it appropriate to seal documents that contain “business  
 15 information that might harm a litigant’s competitive standing.” *Nixon*, 435 U.S. at 589-99. Good  
 16 cause to seal is shown when a party seeks to seal materials that “contain[ ] confidential information  
 17 about the operation of [the party’s] products and that public disclosure could harm [the party] by  
 18 disclosing confidential technical information.” *Digital Reg. of Texas, LLC v. Adobe Sys., Inc.*, 2014  
 19 WL 6986068, at \*1 (N.D. Cal. Dec. 10, 2014). Materials that could harm a litigant’s competitive  
 20 standing may be sealed even under the “compelling reasons” standard. *See e.g., Icon-IP Pty Ltd. v.*  
 21 *Specialized Bicycle Components, Inc.*, 2015 WL 984121, at \*2 (N.D. Cal. Mar. 4, 2015) (information  
 22 “is appropriately sealable under the ‘compelling reasons’ standard where that information could be  
 23 used to the company’s competitive disadvantage”) (citation omitted).

24 Here, the Transcript comprises confidential information regarding highly sensitive features of  
 25 Google’s internal systems and operations that Google does not share publicly. Specifically, this  
 26 information provides details related to the various types of Google’s internal data structures, internal  
 27 identifiers and their proprietary functions, as well as plaintiff health information. Such information  
 28

1 reveals Google's internal strategies, system designs, and business practices for operating and  
2 maintaining many of its important services while complying with legal and privacy obligations.

3       Public disclosure of the above-listed information would harm Google's competitive standing it  
4 has earned through years of innovation and careful deliberation, by revealing sensitive aspects of  
5 Google's proprietary systems, strategies, designs, and practices to Google's competitors. That alone is  
6 a proper basis to seal such information. *See, e.g., Free Range Content, Inc. v. Google Inc.*, No. 14-cv-  
7 02329-BLF, Dkt. No. 192, at 3-9 (N.D. Cal. May 3, 2017) (granting Google's motion to seal certain  
8 sensitive business information related to Google's processes and policies to ensure the integrity and  
9 security of a different advertising system); *Huawei Techs., Co. v. Samsung Elecs. Co.*, No. 3:16-cv-  
10 02787-WHO, Dkt. No. 446, at 19 (N.D. Cal. Jan. 30, 2019) (sealing confidential sales data because  
11 "disclosure would harm their competitive standing by giving competitors insight they do not have");  
12 *Trotsky v. Travelers Indem. Co.*, 2013 WL 12116153, at \*8 (W.D. Wash. May 8, 2013) (granting  
13 motion to seal as to "internal research results that disclose statistical coding that is not publically  
14 available").

15       Moreover, if publicly disclosed, malicious actors may use such information to seek to  
16 compromise Google's internal data structures and internal identifier systems. Google would be  
17 placed at an increased risk of cyber security threats, and data related to browsing of users could  
18 similarly be at risk. *See, e.g., In re Google Inc. Gmail Litig.*, 2013 WL 5366963, at \*3 (N.D. Cal.  
19 Sept. 25, 2013) (sealing "material concern[ing] how users' interactions with the Gmail system affects  
20 how messages are transmitted" because if made public, it "could lead to a breach in the security of the  
21 Gmail system"). The security threat is an additional reason for this Court to seal the identified  
22 information. The information Google seeks to redact, including internal data structures, internal  
23 identifiers and their functionalities, is the minimal amount of information needed to protect its internal  
24 systems and operations from being exposed to not only its competitors but also to nefarious actors  
25 who may improperly seek access to and disrupt these systems and operations. The information also  
26 includes plaintiff health information that should remain private and confidential. The "good cause"  
27 rather than the "compelling reasons" standard should apply but under either standard, Google's  
28 sealing request is warranted.

1 **III. CONCLUSION**

2 For the foregoing reasons, Google respectfully requests that the Court seal the identified portions  
3 of the Transcript.

4  
5 Respectfully,

6 QUINN EMANUEL URQUHART &  
7 SULLIVAN, LLP

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**ATTESTATION OF CONCURRENCE**

I am the ECF user whose ID and password are being used to file this Joint Submission.  
Pursuant to Civil L.R. 5-1(i)(3), I hereby attest that each of the signatories identified above has  
concurred in the filing of this document.

Dated: August 25, 2021

By /s/ Andrew H. Schapiro  
Andrew H. Schapiro  
*Counsel on behalf of Google LLC*